

No. 14774

---

---

United States  
Court of Appeals  
for the Ninth Circuit.

---

ALBERT STAIN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

---

Appeal from the United States District Court  
for the District of Oregon

FILED

SEP 12 1955



No. 14774

---

---

United States  
Court of Appeals  
for the Ninth Circuit.

ALBERT STAIN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court  
for the District of Oregon



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Acknowledgment of Waiver of Trial by Jury...	5
Bond on Appeal.....	10
Certificate of Clerk.....	43
Docket Entries .....	14
Exhibit, Plaintiff's:	
No. 1—Selective Service System File.....	30
Finding and Order.....	8
Indictment .....	3
Judgment and Commitment.....	9
Memorandum, Dated October 8, 1954.....	7
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	13
Order to Transmit Exhibits.....	12
Record of Arraignment and Plea.....	5
Record of Trial and Hearing on Motion for Judgment of Acquittal.....	6
Statement of Points, Appellant's.....	45
Transcript of Proceedings.....	16
Witness, Defendant's:	
Stain, Albert	
—direct .....	18
—cross .....	21
—redirect .....	25
—recross .....	25



NAMES AND ADDRESSES OF ATTORNEYS

G. BERNHARD FEDDE,

1108 S.E. Grand Avenue,  
Portland, Oregon,

For Appellant.

C. E. LUCKEY,

United States Attorney, and

JAMES W. MORRELL,

Assistant United States Attorney,

506 United States Courthouse,  
Portland, Oregon,

For Appellee.





In the United States District Court  
for the District of Oregon

17444

UNITED STATES OF AMERICA

vs.

ALBERT STAIN,

Defendant.

INDICTMENT

For Violation of Section 462, Title 50, U.S.C., and  
Section 1632.14 of the Selective Service Regula-  
tions, Selective Training and Service Act of  
1948, as amended

United States of America,  
District of Oregon—ss.

The Grand Jurors of the United States of Amer-  
ica, for the District of Oregon, duly impaneled,  
sworn and charged to inquire within and for said  
District, upon their oaths and affirmations do find,  
charge, allege and present:

That at all times hereinafter mentioned Local  
Selective Service Draft Board No. 10 of Marion  
County, State of Oregon, was and now is a draft  
board within and for the County of Marion, State  
and District of Oregon, duly created and established  
under and by virtue of the provisions of the Selec-  
tive Training and Service Act of 1948, as amended,  
and the Rules and Regulations issued thereunder;

That Albert Stain, the defendant above named, on  
or about the 18th day of October, 1950, the exact

date being to the Grand Jurors unknown, in Marion County, in the State and District of Oregon, and within the jurisdiction of this Court, then and there being a male person between the ages of 18 and 26 years residing in the United States, and neither relieved by law from the duty of registering in compliance with the Selective Training and Service Act of 1948, as amended, nor relieved from liability for training and service thereunder, and the said Albert Stain having duly registered with the said Local Selective Service Draft Board No. 10 of Marion County, Oregon, and the said Local Selective Service Draft Board No. 10 having classified the said Albert Stain in Class 1-A, he, the said Albert Stain, did knowingly, wilfully, unlawfully and feloniously fail and neglect to perform a duty required of him under the said Selective Training and Service Act of 1948, as amended, and the Rules and Regulations made pursuant thereto, in that the said Albert Stain did knowingly, wilfully, unlawfully and feloniously fail and neglect to submit to induction at Eugene, Oregon, when so ordered by said Local Board No. 10, Marion County, Oregon; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 11th day of April, 1951.

A True Bill.

/s/ MATT O. NOONAN,

Foreman, United States  
Grand Jury.

HENRY L. HESS,

United States Attorney;

/s/ EDWARD B. TIERNEY,

Assistant United States

Attorney.

Bail, \$1,000.00.

Filed in open Court April 11, 1951.

---

[Title of District Court and Cause.]

MINUTE ORDER SEPTEMBER 16, 1953

Now at this day come the plaintiff by Mr. James W. Morrell, Assistant United States Attorney, and the defendant, above named, in his own proper person and by Mr. G. Bernhard Fedde, of counsel. Whereupon, the defendant is duly arraigned upon the indictment herein, and for plea thereto, says that he is not guilty as charged therein. Thereupon,

It is Ordered that this cause be, and is hereby, set for trial Tuesday, November 3, 1953.

McC.

---

[Title of District Court and Cause.]

ACKNOWLEDGEMENT OF WAIVER OF  
TRIAL BY JURY

This matter having come on for trial this 2nd day of October, 1954, the defendant, Albert Stain, appearing in person and represented by his attorney,

G. Bernhard Fedde, the United States of America being represented by James W. Morrell, Assistant United States Attorney, the defendant, Albert Stain, does hereby acknowledge in open court that he is fully advised by counsel and has orally waived and does by this writing waive the right of trial by jury in this cause and does consent to trial of all the issues of fact and law herein by the Court.

Dated at Portland, Oregon, this 2nd day of October, 1954.

/s/ ALBERT STAIN,  
Defendant.

/s/ G. BERNHARD FEDDE,  
Counsel for Defendant.

The United States of America agrees to trial by the Court without a jury.

/s/ JAMES W. MORRELL,  
Assistant United States  
Attorney.

Filed in open Court October 2, 1954.

---

[Title of District Court and Cause.]

MINUTE ORDER OCTOBER 2, 1954

Now at this day come the plaintiff by Mr. C. E. Luckey, United States Attorney, and Mr. James W. Morrell, Assistant United States Attorney, and the defendant, above named, in his own proper person and by Mr. G. Bernhard Fedde, of counsel. Where-

upon, this cause comes on for trial before the Court, and the Court having heard the statements of counsel, and the evidence adduced, at the close of all of the testimony, plaintiff and defendant each having rested its case, defendant moves the Court for judgment of acquittal as to himself, and the Court having heard the arguments of counsel, reserves its decision.

It is Ordered that the plaintiff submit its memorandum in a few days.

McC.

---

In the United States District Court  
for the District of Oregon

No. C-17444

UNITED STATES OF AMERICA

vs.

ALBERT STAIN,

Defendant.

No. C-17819

UNITED STATES OF AMERICA,

vs.

RICHARD IVAN FAXON,

Defendant.

MEMORANDUM

I have examined the files and exhibits in these cases. I see no reason to disturb the findings of the

Draft Boards, and the defendants may be brought in for sentence.

Dated October 8, 1954.

/s/ CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed October 8, 1954.

---

[Title of District Court and Cause.]

#### FINDING AND ORDER

This cause came on for trial before the undersigned Judge on October 2, 1954, the defendant having waived trial by jury; and

The Court having fully considered all of the evidence presented, does hereby

Find the defendant, Albert Stain, guilty as charged in the indictment herein; and it is

Ordered that the case be referred to the Probation Department for presentence investigation and that the defendant be continued on bail pending said investigation.

Dated at Portland, Oregon, this 18th day of October, 1954.

/s/ CLAUDE McCOLLOCH,  
United States District Judge.

[Endorsed]: Filed October 18, 1954.

United States District Court for the  
District of Oregon

No. C-17444

UNITED STATES OF AMERICA

vs.

ALBERT STAIN.

JUDGMENT AND COMMITMENT

On this 20th day of April, 1955, came Jas. W. Morrell, Asst. U. S. Attorney for the government, and the defendant appeared in person and by G. Bernhard Fedde, of counsel.

It is Adjudged that the defendant has been convicted upon a finding of guilty of the offense of knowingly, wilfully, unlawfully and feloniously failing and neglecting to perform a duty required of him under the said Selective Training and Service Act of 1948, as amended, and the Rules and Regulations made pursuant thereto as charged in the Indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of six months imprisonment.

It is Ordered that the Clerk deliver a certified

copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ CLAUDE McCOLLOCH,  
United States District Judge.

[Endorsed]: Filed April 21, 1955.

---

[Title of District Court and Cause.]

COURT APPEARANCE BOND FOR  
ALBERT STAIN

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the United States of America the sum of One Thousand and no/100 dollars (\$1,000.00).

The condition of this bond is that the defendant, Albert Stain, is to appear in the United States Court of Appeals for the Ninth Circuit at San Francisco, in accordance with all orders and directions of the court relating to the appearance of the defendant before the court in the above-entitled case and if the defendant appears as ordered, then this bond is to be void, but if the defendant fails to perform this condition payment of the amount of the bond shall be due forthwith. If the bond is forfeited and the forfeiture is not set aside or remitted, judgment may be entered upon motion in the United States Court of Appeals for the Ninth Circuit against each debtor jointly and severally for the amount above stated together with interest and costs.



and execution may be issued or payment secured as provided by the Federal Rules of Criminal Procedure and other laws of the United States.

This bond is signed on the 23rd day of April, 19. . , at Salem, Oregon.

/s/ ALBERT STAIN,  
Name of Defendant.

/s/ ALEX STAIN,  
Name of Surety.

/s/ LINDA STAIN,  
Name of Surety.

Signed and acknowledged before me this 23rd day of April, 1955.

/s/ GEO. R. DUNCAN,  
Circuit Judge, 3rd Jud. District, Marion County,  
Oregon.

Justification of Sureties

I, the undersigned surety, on oath say that I reside at 1180 Claggett St., Salem, Ore., and that my net worth is the sum of One Thousand and no/100 dollars (\$1,000.00).

/s/ ALEX STAIN,  
Surety.

Sworn to and subscribed before me this 23rd day of April, 1955.

/s/ GEO. R. DUNCAN,  
Circuit Judge 3d Jud. Dist.,  
Marion County, Oregon.

I, the undersigned surety, on oath say that I reside at 1180 Claggett St., Salem, Ore.; and that my net worth is the sum of One Thousand and no/100 dollars (\$1,000.00).

/s/ LINDA STAIN,  
Surety.

Sworn to and subscribed before me this 23rd day of April, 1955.

/s/ GEO. R. DUNCAN,  
Circuit Judge 3rd Jud. Dist.,  
Marion County, Oregon.

[Endorsed]: Filed April 25, 1955.

[Title of District Court and Cause.]

#### ORDER TO TRANSMIT EXHIBITS

This matter coming up on Motion of the defendant for an Order to transmit the exhibits in the above-entitled cause, and the Court being fully advised in the premises, it is hereby

Ordered that the exhibits in the above-entitled cause, and consisting of the following:

Selective Service folder

be transmitted to the Court of Appeals for the Ninth Circuit, where this cause is now pending.

Dated, at Portland, Oregon, this 17th day of May, 1955.

/s/ CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed May 17, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

1. The name and address of the appellant are:

Albert Stain,  
Route 2, Box 453,  
Salem, Oregon.

2. The name and address of the appellant's attorney are:

G. Bernhard Fedde,  
1108 S.E. Grand Avenue,  
Portland 14, Oregon.

3. The appellant is charged with a violation of Section 462, Title 50, U.S.C., and Section 1632.14 of the Selective Service Regulations, Selective Training and Service Act of 1948, as amended, by failing to submit to induction on or about October 12, 1950, as ordered.

4. On October 8, 1954, the Court found the appellant guilty. On April 20, 1955, the Court sentenced the appellant to six months' imprisonment.

5. The appellant has been released on bail pending appeal.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated, this 20th day of April, 1955.

/s/ ALBERT STAIN,  
Appellant.

Service of Copy acknowledged.

[Endorsed]: Filed April 20, 1955.

[Title of District Court and Cause.]

### DOCKET ENTRIES

1951

- Apr. 11—Entered Order to File Indictment and Fixing Bail.
- Apr. 11—Filed Indictment.
- Apr. 11—Filed Report of Foreman of Grand Jury.
- Dec. 7—Entered Order Appointing Allan G. Carson as Defts. Atty.
- Dec. 14—Entered Order Relieving Allan G. Carson as Defts. Atty., and Order Appointing G. Bernhard Fedde as Defts. Atty.

1953

- Sept. 16—Record of Arraignment, Plea Not Guilty and Order Setting for Trial on Nov. 3, 1953.
- Oct. 5—Entered Order Resetting for Trial on Dec. 14, 1953.
- Dec. 4—Entered Order Striking From Trial on Dec. 14, 1953.

1954

- Feb. 11—Filed Motion to Set for Trial.
- Feb. 17—Entered Order Setting Motion to Set for Trial for Hearing Feb. 23, 1954.
- Feb. 23—Filed Motion of Defendant for Continuance.
- Feb. 23—Entered Order Allowing Continuance to March 22, 1954.
- Mar. 22—Entered Order Setting for Trial May 11, 1954.

1954

- Apr. 15—Entered Order Striking From Trial on May 11.
- Sept. 17—Entered Order Setting for Trial on Sept. 28, 1954.
- Oct. 2—Record of Trial Before Court, Hearing on Motion of Deft. for Judgment of Acquittal, Argued, Order for Memo. From U. S. & Order Reserving.
- Oct. 8—Filed, Memorandum of Court. (Covers C-17819 also).
- Oct. 18—Filed and Entered Finding of Guilty, Order for Presentence Investigation and Continuing Deft. on Bail.

1955

- Feb. 16—Filed Probation Officer's Report (in File).
- Apr. 20—Filed and Entered Judgment of Conviction and Sentence of Six Months Imprisonment.
- Apr. 20—Issued Commitment and Copy to Marshal.
- Apr. 20—Entered Order Continuing Deft. on Bond Pending Determination on Appeal.
- Apr. 20—Filed Notice of Appeal.

1955

- Apr. 25—Filed Bond on Appeal to U. S. Court of Appeals.
- May 10—Filed Order Admitting Deft. to Bail Pending Appeal.
- May 16—Filed Designation of Record.
- May 16—Filed Motion for Order to Forward Exhibits.

May 17—Filed and Entered Order to Forward Exhibits.

May 18—Filed Transcript of Testimony, Oct. 2, 1954.

---

United States District Court  
District of Oregon

No. C-17444

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT STAIN,

Defendant.

Saturday, October 2, 1954—A.M.

Before: Honorable Claude McColloch,  
Chief Judge.

Appearances:

C. E. LUCKEY,

United States Attorney; and

JAMES W. MORRELL,

Assistant United States Attorney,

Appearing on Behalf of the Government.

The Defendant appearing in person and by his attorney, Mr. G. Bernhard Fedde.

TRANSCRIPT OF TESTIMONY AND  
PROCEEDINGS

Mr. Morrell: If your Honor please, in the case

of the United States of America vs. Albert Stain, No. C-17444, the Government is ready to proceed with the trial.

The Court: Call your witness.

Mr. Morrell: Your Honor, before proceeding, the Defendant has indicated he wishes to file a written waiver of trial by jury, which he has not done previously.

The Court: It may be filed.

(Waiver by Defendant of trial by jury filed.)

Mr. Morrell: With the Court's permission, before introducing in evidence the Selective Service file relating to the Defendant, on which the Government will stand, it is our desire to make a short opening statement because of the unusual fact situation in this case.

The Court: You may make your statement.

(Opening statement by Mr. Morrell.)

Mr. Fedde: We will waive an opening statement.

(Discussion.)

Mr. Morrell: It is the desire of counsel for the Government and the Defendant to stipulate that the the Defendant was duly classified in Class 1-A by a Local Board in the State of Oregon which had jurisdiction over his classification; that he was thereafter ordered to report for induction as Class 1-A on August 18, 1950; that he was again ordered to report for induction and—I beg your pardon. He did report for induction on the 18th of October.

1950, and refused to be inducted at that time into the armed forces. Is that satisfactory? [2\*]

Mr. Fedde: Strike the word "duly." As far as "duly" classified is concerned, I do not want to stipulate to that.

Mr. Morrell: That is correct. He was classified by a Board which had jurisdiction over him in the State of Oregon.

Mr. Fedde: That is correct.

Mr. Morrell: It is stipulated further that the file may be offered in evidence on behalf of the Government. We are asking, however, that we be allowed to retain the file during the argument which will follow.

The Court: Have it marked.

(Selective Service System file pertaining to the defendant received in evidence and marked Government's Exhibit No. 1.)

Mr. Morrell: With the receipt in evidence of Government's Exhibit No. 1, the Government rests.

### Defendant's Testimony

#### ALBERT STAIN

the Defendant herein, produced as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Fedde:

Q. What is your name and address?



(Testimony of Albert Stain.)

A. Albert Stain, 1180 Claggett Street, Salem, Oregon.

Q. What has been your education? [3]

A. How is that?

Q. How much schooling have you had?

A. I finished Seventh Grade.

Q. Where? A. In Canada.

Q. How much did you go to school during those seven years?

A. We had long winters, and I didn't go to school too much—about three months in the winter and about three or four months in the summer.

Q. Six months every year you went to school, then? A. Yes.

Q. Until 18, how much of your life had been spent in Canada?

A. From 6 years old until I was about 20.

Q. I am going to hand you from Government's Exhibit No. 1 a document which is called SSS Form 100, and will ask you if you signed that form? A. Yes.

Q. Did you have any help in preparing that form? A. Yes, sir, I did.

Q. Who helped you?

A. Calvin Wildt.

Q. Who is he? A. He is my cousin.

Q. Now, I wish to hand you a form known as a special form for conscientious objectors, Form No. 150, and will ask you whether [4] you signed that form? A. Yes, sir, I did.

(Testimony of Albert Stain.)

Q. Did you have any help in preparing that form?

A. Only in the answers to the questions, because I didn't understand them.

Q. Who helped you?           A. Mrs. Nettleton.

Q. Who is she?

A. She is a lady with the Quakers, I believe.

Q. This form was filed September 20, 1950. Why did you wait so long in filing it?

A. When I came from Canada, my cousin told me that I had to make out the form, and he said he would go with me and help me so I would get the right form. Then, when I had to report in Eugene to take my physical, they said I had to make out a different form, so that is why I made out that form.

Q. What was the time of your physical examination, what year?

A. I don't remember the year.

Q. I will hand you a document which is marked NME Form No. 47, a statement of the physical examination conducted at Eugene. Have you ever seen that form before?           A. Yes.

Q. Did you have any help in preparing that form?           A. No, I didn't. [5]

Q. I call your attention to the second sheet entitled "Report of Medical History," in which there are a number of pencil checks. Explain why your "Yes" and "No" answers came in a series of five or six in a row.

A. Well, I don't know. I am slow at understand-

(Testimony of Albert Stain.)

ing questions and so on, and we had a certain length of time to get these filled out, and I just went over them as fast as I could, to get as much done as I possibly could.

Q. Is that the explanation for this? Why didn't you stop when your time expired?

A. Well, we had to stop then. We knew we had a certain length of time to fill this out.

Q. Why did you say, among other things, that you had had gonorrhoea?

A. Well, I didn't understand what that word was. I never did get around very much. I didn't know what that word meant, and the kid next to me he said just to put anything down, and I just went ahead and marked that down.

Q. Do you know now what it is?

A. I do know now.

Q. Have you ever had that disease?

A. No, I didn't.

Q. Where did you get your conscientious objector beliefs?

A. I have always had them—from the teaching of my folks and—well, it would be from childhood. [6]

Mr. Fedde: That is all.

### Cross-Examination

By Mr. Morrell:

Q. Where were you born?

A. I was born in Salem.

Q. Salem, Oregon? A. Yes, sir.

(Testimony of Albert Stain.)

Q. You thereafter moved back and forth to Canada to a certain extent? A. Just once.

Q. Isn't it true you registered for the draft in Salem, where you were living, in the latter part of 1946? A. I think somewhere around in there.

Q. Isn't it also true that immediately thereafter you moved up to Canada? A. No.

Q. Is it not true you registered again for the draft in 1949, about three years after you had registered the first time? A. Yes.

Q. In Eugene?

A. No, I didn't register in Eugene.

Q. In Salem? A. In Salem.

Q. You said on direct examination you had always had the belief [7] that you were conscientiously opposed to war, is that correct? A. Yes.

Q. That you had been since childhood?

A. Yes.

Q. Why was it, then, you did not assert those beliefs or did not raise any objection to being put in Class 1-A?

A. They classified me the same as my cousin was, and he was in 1-A, and I didn't know of any other classification.

Q. Isn't it a fact that a year and a half after you were classified, after you had taken your physical examination to go into the Army, you found out about the conscientious objector classification? Isn't that true? A. Yes.

Q. Then you went to the draft board and said

(Testimony of Albert Stain.)

“I can’t go. I am a conscientious objector.” That is also true, isn’t it?

A. Yes, but then from the time we came back from Canada, the laws were different and I didn’t know what the deal was or anything.

Q. Also, there was a war on, too, wasn’t there?

A. When I first came over?

Q. No. When you came back from Canada, the Korean War was going on, wasn’t it?

A. I think it was over then, I believe, or—I don’t remember. [8]

Q. On your direct examination, you gave as your reason for delay, or your reason for filling out the questionnaire as you did that you were slow in understanding the questions. Is that correct?

A. Yes.

Q. Isn’t it a fact when you received your order to report for induction—I mean, your order to report for physical examination—you promptly reported and were examined physically?

A. Yes, sir.

Q. You also testified you had assistance in and help from somebody in filling out the answers to the conscientious objector questions in Form 150, is that right?

A. Just in explaining the questions to me.

Q. I see. In other words, you did not understand the questions, is that correct?

A. Some of the questions that had big words, I didn’t understand.

Q. These questions in Form 150 are designed to

(Testimony of Albert Stain.)

find out what your beliefs are. You are aware of that?      A. Yes.

Q. And your answers are supposed to be your own answers; you understand that?      A. Yes.

Q. Isn't it true that this person—whoever it was—who [9] helped you with the answers also gave you various Bible quotations which you filled in as answers?

A. I looked them up myself in different places in the Bible.

Q. This was all done after you had been examined and found acceptable, isn't it true?

A. I think so.

Q. I may have asked you this before; I do not recall. You were classified twice, both times as 1-A. Did you ever take any appeal from those classifications to an appeal board?

A. How do you mean that?

Q. Did you ever ask the draft board to allow you to appeal within ten days after you were classified? The record shows you did not?

A. I don't remember.

Q. You do not remember?      A. No.

Q. Did you ever ask to appear before the Board personally, within a month, or a year, after you were classified?

A. Well, if they would have I would have been there.

Q. What I am getting at is: Did you ever in any way object to the classification until after you were given a physical examination for induction?

(Testimony of Albert Stain.)

A. No, I didn't. [10]

Redirect Examination

By Mr. Fedde:

Q. Where did you hear for the first time about the conscientious objector form?

A. At Eugene when I was taking my physical. They had told me at that time there were other things—they told me I had filled out the wrong form and that I had to fill out a different form. They told me to get the form at Salem and I got it and I filled it out then.

Q. Have you ever been told before that there was such a form possible to fill out?

A. No, had not been told.

Q. Counsel for the Government has implied you got help in framing the answers to this questionnaire. What is the fact?

A. The help that I got on that was help explaining the questions,

Q. The answers to the questions——

A. The answers are mine.

Mr. Fedde: That is all.

Recross-Examination

By Mr. Morrell:

Q. You said you were not advised that there was such a thing as a conscientious objector classification. Is that correct?

A. That is right. [11]

(Testimony of Albert Stain.)

Q. Until you took your physical?

A. Yes.

Q. I want to read from the document you just identified as your original questionnaire, Form 100. All the questions in that document, which is in evidence, were answered coherently. Series XVI says: "By reason of religious training and belief I am conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration."

There is a signature line under that, which was not filled in by you until a year and a half after your classification. That was the notice you were given when that form was given you on January 5, 1949.

A. Is that the form that Calvin Wildt helped me fill out?

Q. Yes. It is signed by you. Calvin Wildt helped you fill it out.

A. At the first—at the time he read it and saw the questions, went over them, he says "That is all you have to fill out," and I thought I was doing the right thing.

Q. You understood you were registering for the draft, isn't that correct, and that you might get in the Army as a result of what you stated in the form, is that correct?

A. I knew that everybody was registering. [12]



(Testimony of Albert Stain.)

Q. For the draft?

A. Well, if that is what it was. I don't remember anything on that.

Q. You just testified that you had been opposed to war in any form since childhood. Is that right?

A. Yes.

Q. When you registered for the draft, didn't you think it incumbent upon you to make some objection to serving in the Army?

A. Maybe I didn't take so much heed or notice. I mean, I didn't know what the deal was.

Q. What you mean to say is that you didn't think you would get called, isn't that correct?

A. No, it is not.

Mr. Morrell: That is all.

Mr. Fedde: That is all, your Honor. The Defense rests.

(Witness excused.)

The Court: What is your position, Mr. Fedde?

Mr. Fedde: Our position is that there are a number of violations of procedure and process, and for that reason we are pleading Not Guilty, and we are asking that judgment of acquittal be entered.

The Court: Is there any further testimony?

Mr. Morrell: I have no rebuttal witnesses. [13]

Mr. Fedde: At this time, if the Court please, I would like to move for judgment of acquittal on six grounds:

The first is that the denial of the conscientious objector classification by the draft board was arbitrary

and capricious in that, after reopening his case by giving him the Conscientious Objector form, Form No. 150, on September 14, 1950, which was filed on September 20, 1950, six days later, they held on September 26th, six days after that, that, inasmuch as Albert Stain on the basis of the questionnaire was given a physical examination and found acceptable, his record cannot be reopened. That can be seen by an examination of the file, and that is the sole reason assigned by this local board. Therefore, the draft board's order is illegal, arbitrary and capricious and contrary to law and without basis in fact.

The second basis for the motion is that the undisputed evidence and the draft board's records show that the local board deprived the defendant of his procedural rights to due process by not considering the substance of Form 150 as required by the regulations.

The third point is that the undisputed evidence and the draft board's records show that the local board deprived the defendant of his procedural rights to due process by failing to write a letter to the defendant on or after September 26th, 1950, stating the local board refused to reopen the classification [14] by considering Form 150 as required by Regulation 1625.4, thereby depriving the defendant of a personal appearance before them to explain personally his reason for claiming his 1-O position. Therefore, the order of induction which followed immediately thereafter is illegal, contrary to law, and without any basis in fact.

The fourth basis for the motion is that the undisputed evidence and the draft board's records show the local board deprived the defendant of his procedural rights to due process by failing to write a letter to the defendant on or after September 26, 1950, stating that the local board refused to reopen the classification to consider Form 150, as required by 1625.4, thereby depriving the defendant of an appeal to the appeal board.

Fifth, that the undisputed evidence and the draft board's records show that the local board deprived the defendant of his procedural rights to due process by failing to make an entry on the record sheet of Form 100 of his position, after having reopened the case by handing the Conscientious Objector Form 150 to the defendant on September 14th and filing it on September 20th, the entry being required by Regulation 1625.11, thereby depriving the defendant of an appeal to the appeal board from the decision in reopening. In other words, the record was not put in shape for appeal.

Finally your Honor, the undisputed evidence and the draft board's records show that there is no evidence in the defendant's [15] file, no affirmative evidence, to support the refusal of the local board to reopen his classification after having received and filed defendant's Form 150 on September 20th, and, therefore the decision of the local board on September 26th and the order of induction which followed on October 3rd are arbitrary, capricious, illegal and constitute a violation of due process of law.

Your Honor, I have prepared a memorandum which I will hand up.

The Court: Can you leave us a copy of your motion, too?

Mr. Fedde: Each point of the motion, as I have read it, is set forth in the memorandum.

(Argument of counsel.)

### Reporter's Certificate

I, Ira G. Holcomb, official court reporter, do hereby certify the foregoing to be a true, full and accurate transcript of my shorthand notes taken in the above-entitled cause on, to wit, October 2, 1954.

Dated at Portland, Oregon, this 18th day of May, 1955.

/s/ IRA G. HOLCOMB,  
Official Court Reporter.

[Endorsed]: Filed May 18, 1955. [16]

---

### PLAINTIFF'S EXHIBIT No. 1

#### Series XIV.—Conscientious Objection to War

Instruction.—Any registrant who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form shall sign the statement below requesting a Special Form for Conscientious Objector (SSS Form No. 150) from the local board.

By reason of religious training and belief I am

conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration.

9-14-50.

/s/ ALBERT STAIN.

Series XV.—Physical Condition

Instructions.—Every registrant shall complete this series. Any registrant who answers any of the questions listed below by “Yes” and who believes himself physically disqualified for service in the Armed Forces may attach an affidavit from his physician, hospital, or sanatorium to support his claim.

1. Do you have any physical or mental condition which, in your opinion, will disqualify you from service in the Armed Forces? [Ans.]: No.

2. If the answer to Question 1 is “Yes,” state the condition from which you are suffering: [Ans.]: No.

3. Are you now, or have you ever been, an inmate or a patient in a mental hospital or institution? [Ans.]: No.

4. Are you now, or have you ever been, an inmate or a patient in a tuberculosis hospital or sanatorium? [Ans.]: No.

5. If the answer to Question 3 or Question 4 is “Yes,” give the name and address of each hospital, institution, or sanatorium: .....

6. Have you had treatment from a physician for any condition within the last 5 years?

[Ans.]: No.

7. If the answer to Question 6 is "Yes," state each condition from which you suffered and give the name and address of the physician who attended you, and dates of each treatment:.....

Registrant's Statement Regarding Classification

Instructions.—It is optional with registrant whether or not he completes this statement, and failure to answer shall not constitute a waiver of claim to deferred or other status. The local board is charged by law to determine the classification of the registrant on the basis of the facts before it, which will be taken fully into consideration regardless of whether or not this statement is completed.

In view of the facts set forth in this questionnaire it is my opinion that my classification should be Class .....

The registrant may write in the space below or attach to this page any statement which he believes should be brought to the attention of the local board in determining his classification.

.....

Registrant's Certificate

Instructions.—1. Every registrant shall make the registrant's certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is

unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

Notice.—Imprisonment for not more than five years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Selective Service Law of 1948.)

I, ....., certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are not in my own handwriting.

Registrant sign here:

/s/ ALBERT STAIN.

(Signature of Mark of Registrant.)

/s/ CALVIN WILDT.

(Signature of Witness to Mark of Registrant.)

If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in

preparation of this questionnaire because he did not understand it.

/s/ CALVIN WILDT.

(Signature of Person Who  
Has Assisted.)

(Registrants Will Make No Entries on This Page)

Minutes of Actions by Local Board  
and Appeal Board

- 2/14/49—Classified by local board: 1-A  
1A, J. E. B. Vote: Yes 4, No 0.
- 2/17/49—Class 1-A SSS Form No. 110 Mailed to  
Registrant.
- 8/18/50—SSS 223 Order to Report for Preinduc-  
tion Physical mailed.
- 9/ 8/50—Form 62 mailed.
- 9/19/50—Form 150 handed to registrant.
- 10/ 3/50—SSS 252, Order to Report for Induction,  
mailed.
- 10/24/50—Inf. requested from records depot on  
first regis.
- 10/25/50—Forwarded to U. S. Attorney, Portland,  
Oregon.
- 2/ 7/51—File received from U. S. Attorney.
- 2/10/51—Letter to registrant telling him to report  
for induction Feb. 13. 1951.
- 2/14/51—Registrant appeared at the office stating  
he refused to submit to induction.
- 2/14/51—File forwarded to Mr. Stringer at State  
Headquarters.



Selective Service System

Special Form for Conscientious Objector

Selective Service No.: 35 10 28 269.

[Stamped]: Local Board No. 10, Marion County,  
Sept. 14, 1950, Salem, Oregon.

Name: (Last) Stain, (First) Albert.

Address: Rt. 2, Box 453.

Salem, Marion (County), Oregon.

This form must be returned on or before: 20  
September, 1950. (Five days after date of mailing  
or issue.)

Instructions

A registrant who claims to be a conscientious ob-  
jector shall offer information in substantiation of  
his claim on this special form, which when filed shall  
become a part of his Classification Questionnaire  
(SSS Form No. 100).

The questions in Series II through V in this  
form are intended to obtain evidence of the genuine-  
ness of the claim made in Series I, and the answers  
given by the registrant shall be for the information  
of only the officials duly authorized under the regu-  
lations to examine them.

In the case of any registrant who claims to be a  
conscientious objector, the local board shall proceed  
in the prescribed manner to determine his proper  
classification. The procedure for appeal from a  
decision of the local board on a claim of conscien-  
tious objection is provided for in the Selective  
Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; Provided, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

### Series I.—Claim for Exemption

Instructions.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

(A) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form. I, therefore, claim exemption from combatant training and service. I understand that if my claim is sustained I will be inducted into the armed forces but will be assigned to noncombatant service as defined by the President.

.....,

(Signature of Registrant.)

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training or service in the armed forces. I, therefore, claim exemption from combatant training and service and, if my claim is sustained, I understand that I will, because of my conscientious objection to non-

combatant service in the armed forces, be deferred as provided in Section 6 (j) of the Selective Service Act of 1948.

/s/ ALBERT STAIN.

(Signature of Registrant.)

Series II.—Religious Training and Beliefs

Instructions.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Do you believe in a Supreme Being?

(Ans.) Yes.

2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a supreme being involves duties which to you are superior to those arising from any human relation.

I believe in Almighty God, thou shall not kill. The Bible teaches, "God is most powerful, Christians pray for God's Kingdom," Math. 6: 10. Jesus says my Kingdom is not of this world.—John 18:36.

then would my servants fight that I may not be delivered to the Jews. But now is my Kingdom not from hence

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

From childhood my parents have taught me

the Bible, I believe it myself and also read the Bible and try and follow what it says.

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

I have had home Bible studies, "study to show thyself approved unto God a workman that needeth not to be ashamed rightly dividing the word of truth.—2 Timothy 2:15.

5. Under what circumstances, if any, do you believe in the use of force?

Remember the Lord, which is great and terrible and fight for your brethren and sons and your daughters, your wives and your houses.—Nehemiah:14.

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

I was brought up in a Christian home and do unto others as I want others to do unto me. Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind.—Matthew 22:37.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.....

### Series III.—General Background

Instructions.—Every question in this series must

be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

Name of school: Silver Spring.

Type of school: Public.

Location of school: Okla, Sask., Canada.

Dates attended: From 1935 to 1945.

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Period worked: From 1947, to 1948.

(Type of work): Plumbing. (Name of employer): Henry Ruchel. (Address of Employer): 1675 N. Commercial, Salem.

Period worked: From 1949, to 1950.

(Type of work): Truck Driver. (Name of Employer): J. H. Marks. (Address of Employer): Odessa, Texas.

Period worked: From 1934, to 1946.

(Type of work): Farming. (Name of Employer): My dad. (Address of Employer): Rt. No. 2, Box 453, Salem.

Period worked: From 1946, to 1947.

(Type of work): Cooks Helper. (Name of Employer): Perry. (Address of Employer): C. P. R. Vancouver, Canada.

3. Give all addresses and dates of residence where you have formerly lived.

Dates of residence: From 1934, to 1945.

(Name of city, town, or village): Okla. (State or foreign country): Sask., Canada. (Street address or R. F. D. route): Okla, Sask.

Dates of residence: From 1945, to 1947.

(Name of city, town, or village): Vancouver. (State or foreign country): British Columbia. (Street address or R. F. D. route): 127 Blundell Rd.

Dates of residence: From 1947, to 1950.

(Name of city, town, or village): Salem. (State or foreign country): Oregon. (Street address or R. F. D. route): Rt. No. 2, Box 453.

4. Give the name and address of your parents and indicate whether they are living or not.

Alex Stain and Linda Stain. Rt. No. 2, Box 453, Salem, Oregon. Both are living.

5(a) State the religious denomination or sect of your father?

Assembly of God.

(b) State the religious denomination or sect of your mother:

Assembly of God.

Series IV.—Participation in Organizations

Instructions.—Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

No.

2. Are you a member of a religious sect or organization?

No.

\* \* \*

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

I have had some Bible studies with Jehovah's Witnesses.

Series V.—References

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

(Name): Alex Stain. (Full address): Rt. 2, Box 453, Salem. (Occupation or position): Farmer. (Relationship to you): Father.

(Name): Linda Stain. (Full address): Rt. 2.

Box 453, Salem. (Occupation or position):  
Housewife. (Relationship to you): Mother.

(Name): Milton E. Ostman. (Full address):  
1295 Shady Lane, Salem. (Occupation or posi-  
tion): Laborer. (Relationship to you): None.

### Registrant's Certificate

Instructions.—1. Every registrant claiming to be a conscientious objector shall make this certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

Notice.—Imprisonment for not more than five years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Selective Service Law of 1948.)

I, Albert Stain, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information,



and belief. The statements made by me in the foregoing are in my own handwriting.

Registrant sign here :

/s/ ALBERT STAIN.

(Signature or Mark of  
Registrant.)

\* \* \*

STATEMENT OF LOCAL BOARD No. 10

September 26, 1950.

Board decided that inasmuch as Albert Stain, on the basis of his Questionnaire, was given a physical examination and found acceptable without protest, his record cannot be reopened.

/s/ PAUL R. HENDRICKS,

Member of the Local Board No. 10, Marion Co.,  
Salem, Oregon.

---

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, F. L. Buck, Acting Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Indictment; Record of arraignment and plea; Acknowledgement of waiver of trial by jury; Record of trial and hearing on motion for judgment of acquittal; Memorandum dated October 8, 1954; Finding and order; Judgment and commitment; Bond; Order to transmit exhibits; Designation of

record and Continuation of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered C-17444, in which Albert Stain is the defendant and appellant and the United States of America is the plaintiff and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that the cost of filing the notice of appeal is \$5.00, and that the same has been paid by the appellant.

I also certify that there is enclosed herewith the reporter's transcript of proceedings dated October 1, 1954, and Exhibit No. 1.

In Testimony Whereof I have hereto set my hand and affixed the seal of said court in Portland, in said District, this 23rd day of May, 1955.

[Seal]      /s/ F. L. BUCK,  
Acting Clerk.

---

[Endorsed]: No. 14774. United States Court of Appeals for the Ninth Circuit. Albert Stain, Appellant, vs. United States of America, Appellee: Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed May 24, 1955.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. C-14774

ALBERT STAIN,

Defendant-Appellant,

vs.

UNITED STATES OF AMERICA

APPELLANT'S STATEMENT OF POINTS

I.

Because of the errors in law and arbitrary and capricious acts of the local board, the District Court erred in failing to grant a Motion for Judgment of Acquittal.

II.

The denial of the conscientious objector status by the local board was without basis in fact; consequently the I-A classification by the board is arbitrary, capricious and contrary to law.

III.

The filing of the Form 150 (special form for conscientious objectors) by the appellant made a prima facie case justifying a change in classification to I-O, and the failure of the local board to consider the form on its merits at all and to build a record of affirmative substantial evidence of misrepresentation or any rebuttal at all was so arbitrary, capricious and contrary to law as to render

the subsequent Order to Report for Induction and the indictment based thereon null and void.

#### IV.

The refusal of the local board to reopen and meet appellant's prima facie case on the irrelevant ground that he had taken a routine physical examination without protest, and the subsequent failure to make any entry on the Form 100 of its decision, and the failure to write the appellant a letter stating its decision, and the failure of the local board to take any affirmative action continuing him in his earlier I-A classification, thereby depriving the appellant of a right to a personal hearing before the local board as well as an appeal to the state appeal board, were all arbitrary, capricious and contrary to law, so as to render the Order to Report for Induction seven days later and the indictment based thereon null and void.

/s/ G. BERNHARD FEDDE,  
Attorney for Defendant-  
Appellant.

Service of Copy acknowledged.

[Endorsed]: Filed June 3, 1955.